

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Ricardo Acosta,
also known as Ricardo Acosta Lucchesi,

Plaintiff,

v.

ORDER

Civil No. 11-1524 ADM/SER

Anne Marie Acosta,

Defendant.

Nancy Zalusky Berg, Esq., and Allison Maxim, Esq., Walling, Berg & Debele, P.A., Minneapolis, MN on behalf of Plaintiff.

Gerald Williams, Esq., Williams Divorce & Family Law, Woodbury, MN on behalf of Defendant.

On August 23, 2011, the undersigned United States District Judge heard oral argument on Plaintiff Ricardo Acosta’s (“Plaintiff”) Ex Parte Motion for Order to Show Cause and Temporary Restraining Order [Docket No. 3]. In this action, Plaintiff invokes the Convention on the Civil Aspects of International Child Abduction and the International Child Abduction Remedies Act, 42 U.S.C. §§ 11601-11611, in seeking the return of his two children, M.A.A. and E.T.A., to Peru. See generally Pet. for Return of Children [Docket No. 1].

The children’s mother, Defendant Anne Marie Acosta (“Defendant”), allegedly told Plaintiff that she was bringing the children from Peru to Minnesota to visit family for Christmas and would return with them after the holiday season. Pet. for Return of Children ¶¶ 11-13. In February 2011, Defendant went back to Peru, without the children, to retrieve personal property and told Plaintiff that neither she nor the children would be returning to live in Peru. Id. ¶ 15. In March 2011, she commenced divorce proceedings, seeking sole legal and physical custody of the

children, in Ramsey County, Minnesota. Pet. for Return of Children, Ex. 5 at 3, 4.

After filing his Petition, Plaintiff was unable to effect service of process on Defendant. His motion, then, was to be ex parte, although Defendant's divorce lawyer was given notice of oral argument. Notice of Hr'g on Mot. [Docket No. 6], Attach. 1. However, Defendant was present at oral argument, represented by her divorce attorney.

At oral argument, additional factual representations were made by both parties. In particular, it was represented that Plaintiff has pled guilty to criminal charges in Minnesota and awaits sentencing on September 1 and that Defendant's divorce petition is the subject of a motion to dismiss for fraud. With both parents presently in Minnesota participating in parallel court proceedings, any immediate return of the children to Peru would make little logistical or legal sense. Further, Plaintiff's criminal sentence and dismissal of the divorce petition could affect the remedies the Court orders in this matter. Therefore, the Court will stay this matter to allow for further factual development and orders Defendant to remain in this jurisdiction, ensure the children remain in this jurisdiction, and surrender the children's passports to her attorney.

Based upon all the files, records, and proceedings herein and for the reasons stated on the record at the conclusion of oral argument, **IT IS HEREBY ORDERED:**

1. Plaintiff Ricardo Acosta's Ex Parte Motion for Order to Show Cause and Temporary Restraining Order [Docket No. 3] is **GRANTED IN PART AND DENIED IN PART;**
2. Defendant Anne Marie Acosta shall remain, and cause her minor children M.A.A. and E.T.A. to remain, within the state of Minnesota until further Order of the Court;

3. Defendant Anne Marie Acosta shall surrender M.A.A.'s passport and E.T.A.'s passport to Gerald Williams, Esq., the passports shall remain in Mr. Williams' possession until further Order of the Court; and
4. This action is stayed until September 10, 2011. Plaintiff shall renew his Petition on or before October 1, 2011 or this action will be dismissed.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: August 23, 2011.